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A CENTURY OF SERVICE



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Committed to Community Service



March 27, 2024

Submitted via: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Courtney Tyler  
Clerk to the State Water Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Re: Comment Letter — Proposed Making Conservation a California Way of Life Regulation

Dear Ms. Tyler,

The Association of California Water Agencies (ACWA) and the undersigned organizations appreciate the opportunity to provide comments to the State Water Resources Control Board (State Water Board) on the proposed Making Conservation a California Way of Life Regulation (Regulation). ACWA and its coalition partners submitted comprehensive comments to the State Water Board on the August 2023 version of the proposed Regulation. Core to ACWA's comments was the request that the State Water Board work with ACWA, water suppliers, and other interested parties to address the policy and technical concerns in the revised draft. We immensely appreciate the significant time that State Water Board staff and Board Members, environmental and environment justice groups, and water suppliers dedicated to this process in November and December of 2023, which resulted in 21 meetings of five working groups. We believe that collaborative processes focused around understanding diverse perspectives and discussing different solutions lead to improved and effective policy.

Water suppliers offer a unique and important perspective on the development of the proposed Regulation because water suppliers have developed and successfully implemented water use efficiency programs, in partnership with their customers, over the past several decades. As noted in the Legislative Analyst's Office (LAO) January 2024 Report to the Legislature, *Assessing Early Implementation of Urban Water Use Efficiency Requirements* (Report), these local and state actions have led to water use reduction in which the state uses roughly the same total amount of urban water now as it did in 1990, despite a 30% increase in population.

We support many of the changes made to the proposed Regulation to address the water communities' feasibility, cost, and flexibility concerns in the previous version. We remain committed to continuing to work productively with the State Water Board and other interested parties to finalize this regulation so that water suppliers can continue to advance the goals of Making Conservation a California Way of Life.

#### [Section 1. Support for Changes to the Revised Proposed Regulation](#)

ACWA and the undersigned coalition partners are in strong support of the following changes made to the revised proposed Regulation. These changes are foundational to the success of this regulation, which we define as water suppliers' ability to work with their customers to achieve meaningful water savings and multi-benefits, while considering cost, affordability, and suppliers'

good faith efforts, while minimizing unintended impacts. We urge the State Water Board to retain these changes in the final Regulation that it adopts.

1. Support for Changes to Timelines

- a. Outdoor Water Use Standard: We are in strong support of the proposed revisions of Section 968 to the outdoor residential water use standards timelines. The provision of five additional years to achieve meaningful water use reductions is reasonable, allows for more cost-effective implementation, and does not undermine the overall savings that will be achieved. In our October 2023 Comment Letter, we expressed significant concern that the initial proposed timelines were not reasonable, did not support cost-effective compliance, and would not achieve the multi-benefits desired. These concerns were also recognized in the LAO Report that “although the requirements are phased in over multiple years, the timeline for full implementation may be too aggressive given the number of changes that will have to occur to achieve the level of conservation envisioned. In addition, although the SWRCB is two years behind adopting final rules, suppliers’ deadlines (which are set in statute) have not been correspondingly adjusted.”

To achieve the ambitious water use efficiency standards that this regulation would establish, water suppliers will need to develop and implement new programs that require long-term customer behavior change and significant investments. With a final Regulation expected to go into effect in 2025, starting compliance in 2025 would not be reasonable as 42% of suppliers be out of compliance. Additionally, suppliers would not have the appropriate time to collect and submit the required data for variances, which help ensure that individual water use objectives include all significant and appropriate uses of water. We strongly believe that the adjustments to the outdoor standards timeline will help provide the necessary time for all urban retail water suppliers to analyze existing water use efficiency programs; plan for cost-effective compliance with the standards, objectives and performance measures; budget for and staff programs; educate customers and build partnerships, including targeted programs for disadvantaged communities (DACs); allow for technology advancements; and avoid unintended impacts to urban trees, DACs, and water affordability.

The proposed outdoor standards of a 0.55 Landscape Efficiency Factor (LEF) are far more stringent than the Department of Water Resources’ (DWR) 2022 *Recommendations to the State Water Board*, developed in coordination with the State Water Board and a diverse group of stakeholders and technical analyses and studies, of 0.63 LEF by 2030. The LAO Report, Public Policy Institute of California and many water suppliers have called for the State Water Board to revert to DWR’s recommendations for an outdoor standard. We believe that the achievement of 0.55

LEF for 2040 will be a tremendous lift for many suppliers and could still impose significant feasibility and cost-challenges, particularly absent dedicated funding or technical assistance.

- b. CII Performance Measures. We strongly support the proposed revisions to the implementation timelines for the Commercial, Industrial, and Institutional (CII) Performance Measures (PMs). Like the water use efficiency standards, compliance with the CII PMs in the previous version of the Regulation were proposed to begin in 2025. Additionally, implementation schedules for the CII PMs were overly prescriptive, requiring a specified percentage of completion bi-annually, and all stacked on top of each other within a five-year period, despite some CII PMs requiring completion before moving on to the next. We believe that the revised schedule will provide water suppliers with appropriate flexibility to successfully complete the CII PMs, resulting in reduced cost-impacts and reduced implementation challenges.

## 2. Support for Changes to Compliance

- a. Compliance in 2027. We strongly support the proposed modification to the compliance start date of 2027. Enacting legislation SB 606 and AB 1668 (2018) directed the regulation to be adopted by 2022 and defined the implementation and enforcement path, that authorized the State Water Board to:
  - Issue information orders starting January 1, 2024
  - Written notices starting January 1, 2025
  - Conservation orders starting January 1, 2026
  - Civil liabilities starting January 1, 2027

We believe that adjusting compliance to begin in 2027 is consistent with the intent of the enacting legislation, which created a pathway within the first two to five years from the intended 2022 adoption date of the regulation for suppliers to develop programs that will be essential to achieving compliance. The change in compliance dates provides an important signal and more certainty to suppliers that the State Water Board's focus is on the successful compliance with the regulation, rather than enforcement.

- b. Alternative Compliance Pathway. We strongly support the proposed changes to Section 966(i) and (j) that provide for a more feasible alternative compliance pathway. In our October 2023 letter, we expressed concern that many suppliers' proposed water use objectives were unreasonable or infeasible. Based on preliminary data, the initial version of the proposed Regulation indicated that 41% of suppliers could be required to achieve water use reductions greater than 20% within the next 10 years. Many of these communities serve DACs. We raised concerns that the previously proposed alternative compliance pathway did not provide a pathway

to compliance. It only provided five additional years and had many requirements that were infeasible or unreasonable for suppliers.

We believe that the two alternative compliance pathways currently proposed, one for communities below the Median Household Income (MHI) and with a water use reduction greater than 20% and one that applies to all suppliers with a reduction greater than 30%, are both necessary and strike an appropriate balance of achieving meaningful water savings. There was significant discussion on alternative compliance in the State Water Board's working group meetings, and we appreciate that the State Water Board has now removed requirements that were infeasible for many water suppliers (e.g., eligibility requirements of 40% dedicated funding to DACs, which conflicts with Proposition 215, SITES rating system, and Tree City USA recognition). We believe that the revised alternative compliance requirements, which direct suppliers to develop a plan and show how they will meet a threshold of savings, provide more flexibility and align more accurately with the overall goals of advancing water use efficiency.

We appreciate some interested parties' concerns regarding 966(j) and the perception that communities with a higher MHI will be provided greater flexibility than the previous version of the regulation. However, this proposed pathway would still result in suppliers achieving a minimum of 30% reduction in water use in the next 15 years. This is significant and would require suppliers and customers to make substantial investments and changes in water use. Additionally, we note that a cap was not proposed on the total reduction, and for suppliers eligible for 966(j) and with a reduction greater than 30%, they will continue to meet the full extent of their water use objective but are being provided reasonable time with 2% per year annual reductions.

3. Support for Inclusion of Irrigable, Not Irrigated. We support changes to Section 968(b)(2)(B) that allows for the inclusion of 20% of the suppliers' unique square footage of Irrigable Not Irrigated (INI) area. These changes align the draft Regulation more consistently with existing law and the Department of Water Resources' (DWR) analysis and recommendations to the State Water Board. In Section 2, Comment 1 of this letter, we note continued concern with provisions of this section, and request additional changes to make the provisions of INI consistent with existing law.

As noted in our previous comment letter, the Conservation Legislation requires outdoor efficiency standards to apply to "irrigable lands" (Wat. Code, § 10609.6 (2)(B)). The August 2023 draft Regulation did not apply to "irrigable lands" as the statute requires. Instead, the draft Regulation only included irrigable land that is currently being irrigated in its proposed outdoor standards. Section 968(b)(2)(B) inappropriately limits 20% of the irrigable, but not currently

irrigated (INI), landscape area as eligible for inclusion in the objective until 2027, and even then, it is only allowed to be included if the supplier will surpass its objective target without it. Because the draft Regulation did not apply to all irrigable lands, it was inconsistent with the Conservation Legislation. Additionally, we noted that DWR conducted a statistical analysis of outdoor water use, Landscape Area Measurement (LAM) and INI data. The data concluded that the INI area is being irrigated at one fifth or 20% of the irrigable area. This 20% should not be viewed as additional, but as area that is being irrigated. As a result, DWR correctly recommended that the calculation of annual outdoor water use must include 20% INI. DWR's findings were also based on the recognition that its analysis was only a snapshot in time and undercounting of irrigated area would continue unless multiple images are conducted over the analysis year.

4. Support for Other Technical Changes.

- a. Outdoor Water Use Efficiency Standards. We support the following changes made to Section 968:
  - Inclusion of residential parkway landscape.
  - Inclusion of alternative sources of data for LAM, evapotranspiration, and effective precipitation.
  - Designation of special landscapes areas with a LEF of 1.0.
  - Designation of residential special landscape standard as 1.0 and the addition of recycled water irrigated landscape.
  - Clarification for variances and temporary provision approval, including process, required information, and timeline for inclusion.
  - Removal of temporary provisions for existing residential pools, spas and similar water features.
- b. CII PMs. We support the following changes made to Section 972, 973 and 974:
  - Removal of interim implementation schedules of CII performance measures
  - Changes to the definition of large landscape.
  - Inclusion of additional flexibility in the options of in-lieu technologies.
  - Modifications to identification of disclosable buildings through existing California Energy Commission resources, and associated reporting requirements.
  - Inclusion of alternative methodologies for identifying CII connections to develop conservation programs.
  - Consideration for suppliers with limited CII water use.
  - Compliance through regional programs.
- c. Bonus Incentive. We support the following changes to Section 971:



- Development of methodology for calculating the bonus incentive through direct potable reuse.

## Section 2. Requests for Changes

1. Request for Changes to Recognize Data Errors and Limitations. We urge the State Water Board to recognize that there are and will continue to be inherent data quality limitations and variability that impact suppliers' compliance with their water use objective. As water suppliers and the state work together to implement the final Regulation, the goal for high-quality data is important. However, we continue to request changes that recognize inherent data limitations and gaps.
  - a. Compliance and Enforcement. **We request that a final Regulation make clear that it will consider data limitations and errors and provide technical assistance prior to taking enforcement actions.** The State Water Board should make clear that "if a supplier does not meet its water use objective because of potential data errors and limitations (e.g., it is unable to obtain the information required for variances, there are potential errors in landscape area measurement (LAM) data), prior to any enforcement action, technical assistance must be offered to the supplier to correct data errors and limitations.
  - b. Evaluate Future LAM for Error. We appreciate that the State Water Board's revised proposed Regulation allows for updated aerial imagery and landscape classification. We want to work with the State Water Board and DWR to better understand landscape classification, as it relates to retailer's actual water use of existing landscapes, particularly INI. **Any new LAM data should be analyzed to determine the accuracy and associated errors (e.g., areas classified as INI that are likely irrigated), and those errors should be reflected in suppliers' updated LAM.** As currently proposed, the proposed Regulation does not provide any flexibility to account for errors in updated LAM.
  - c. Data Error Adjustment. Regarding the request for a Data Error Adjustment (DEA), we note that the State Water Board has accounted for data quality and variability issues in other regulations, such as the Water Loss Regulation, which provided that "a supplier shall maintain, for each compliance assessment, real loss that is no greater than 5 gallons per connection per day above the supplier's real water loss standard." The DEA would be a percentage, either five or ten percent as determined below, added to a supplier's budget for efficient indoor residential water use, efficient outdoor residential water use, and efficient water use on a CII landscape with a dedicated irrigation meter (DIM) or equivalent technology.

2. Request for Inclusion of Irrigable, Not Irrigated.

- a. New LAM Data. The proposed Regulation would remove the inclusion of 20% of the suppliers' unique square footage of INI area once updated landscape area is provided. Like DWR's statistical findings that 20% of INI landscape is being irrigated, new LAM data would likely include similar errors. **We request that whenever new LAM data is developed, updated INI "buffers" are again provided, and that suppliers may use the updated INI "buffer" data to meet compliance.**
- b. Consideration of INI. We have concerns with the language in the revised draft Regulation related to Section 968(b)(2)(B) that provides for the inclusion of 20% of suppliers unique square footage of Irrigable Not Irrigated area *"if the supplier's actual urban water use for the reporting year, calculated in accordance with section 10609.22, is greater than the urban water use objective calculated pursuant to section 966 without inclusion of Irrigable Not Irrigated area."* While we appreciate the improvements from the previous version of the proposed Regulation, we still believe that this is inconsistent with the requirements of existing law and DWR's analysis, which recognized that INI lands are in fact being irrigated and should be included in suppliers water use objective. **This language should be struck from the final Regulation.**

3. Request for Changes to Effective Precipitation. **We continue to request that Effective Precipitation be removed from the final Regulation and outdoor standard.** Effective Precipitation is not required by MWELO (Title 23, Division 2.7, Section 494): "A local agency may consider Effective Precipitation (25% of annual precipitation) in tracking water use." The inclusion of Effective Precipitation in the outdoor standard is inconsistent with real-world irrigation practices. Landscapes are generally not designed to consider effective precipitation since it can be highly variable. Precipitation often falls during winter months when irrigation is not utilized (May through September) and can percolate below the root zone of the plant negating its beneficial effect to that plant's watering needs. Additionally, precipitation is often not distributed evenly throughout a supplier's service area. Some areas may receive precipitation and other areas none, making it difficult to apply one effective precipitation rate at the water supplier level.

4. Request for Clarification of Compliance 2027 and Progressive Enforcement. We appreciate that the State Water Board has a positive track record of utilizing its enforcement discretion. Additionally, as mentioned in Section 1 Comment 2a of this letter, we support that the revised proposed Regulations modifies the compliance date to 2027. We assume that the intent of 2027 compliance means a progressive enforcement consistent with statute, in which the State Water Board may issue information orders starting 2027, written notices in 2028, conservation orders in 2029, and civil liabilities in 2030. However, the language is

vague, and the steps and timelines of the State Water Board's progressive enforcement should be defined to provide certainty to all interested parties.

5. Request for Improvements to Reporting.

- a. Reporting Year. The Conservation Legislation allows for water suppliers' calculations to be based on "conditions for the previous calendar or fiscal year." (Wat. Code § 10609.20, subd. (b).) Section 975 of the draft Regulation would require urban water supply reports to be based on conditions of the previous state fiscal year. A regulation cannot limit flexibility that a statute specifically allows. We additionally note that this is inconsistent with the State Water Board's adopted Water Loss Regulation, which allows water loss audit reporting on either a fiscal or calendar year. Because the proposed Regulation would require water suppliers to report based on the state fiscal year, it is inconsistent with the Conservation Legislation. Additionally, we note that the requirement for suppliers to report on a fiscal year basis creates conflict with other existing reporting requirements, including the electronic annual report. **We request that a final Regulation allow suppliers to report either calendar year or fiscal year.**
- b. Streamline Reporting. Given the 15-day comment period deadline, we did not have adequate time to provide detailed comments to all the new reporting requirements. However, we note significant concern with the newly proposed reporting requirements that are either duplicative with existing reporting to the State Water Board or request reporting that is outside the scope of the enacting legislation and regulation. Following the submittal of our comment letter, we would like to work with State Water Board staff and other interested parties to make technical changes to the final Regulation to address the following problematic reporting requirements:

- i. Top 10% single family residential and multi-family residential customers
- ii. Excluded demands (e.g., process water estimate and MUM volumes)
- iii. Volume reporting
- iv. Applied water to large landscapes
- v. Estimated water savings
- vi. Reporting units

**We request that State Water Board staff meet with water suppliers to discuss technical revisions to the reporting requirements to minimize duplicative and burdensome reporting that does not align with the intent of enacting legislation.** Additionally, we request that any final reporting document that water suppliers must complete be developed through a collaborative process.

6. Request for Technical Cleanup on CII PMs.

- a. CII Classification. We continue to request that the four additional proposed classifications that deviate from the Energy Star Portfolio Manager broad categories be removed from the proposed Regulation. We do not understand the value that including these additional classifications would provide for the burden they create for suppliers.
- b. CII BMPs.
  - i. Key Business Activity Indicator (KBAI). We appreciate the flexibility that the addition of the KBAI option provides in targeting CII programs and PMs in Section 974. This would allow suppliers to target inefficient water use more effectively. It is important to note that there is significant variability in water use, even within a single classification category, within a single supplier service area, and between suppliers. These variations can be due to the location, operating hours, extent of outdoor landscaping, seasonal variation, etc. As a result, it would be challenging to establish a single efficiency standard or easily identify inefficient customers based on a single benchmark in each classification. In some cases, inefficiency could be determined based on the age of plumbing fixtures or devices, evidence of leaks, or other on-site conditions that are not necessarily readily identifiable across a classification or obvious in the analysis of water use data. **We request that the language be clarified to acknowledge that the determination of efficiency could have a wide range and could be challenging to quantify, and that the supplier would target these CII customers based on the range in addition to other factors, determined by the supplier, based on their local service area.**
  - ii. “Offer” vs. “Implement”. The draft Regulation requires suppliers to “implement” actions and technologies for large landscapes. The term “implement” implies that suppliers will take up an action on a customer's behalf. Suppliers may offer programs, rebates, incentives, and in-lieu technologies, but suppliers cannot require the customer to act or implement in-lieu water use technologies. **The draft Regulation should replace “implement” with “offer” to recognize suppliers’ appropriate authorities.**
  - iii. Statewide Entities. We appreciate changes that allow a supplier to rely on implementation by a regional entity in lieu of implementing its own conservation program. We recommend that statewide entities also be included.

We appreciate the opportunity to provide these written comments to the State Water Board on the draft Regulation. We ask for the opportunity to work collaboratively with the State Water Board on provisions to clarify and streamline reporting and compliance, and we look forward to the finalization of this regulation so the true work of Making Conservation a California Way of Life can begin. Please do not hesitate to contact me at ChelseaH@acwa.com or (916) 206-4078 if you have any questions regarding our input.

Sincerely,  
Chelsea Haines



Regulatory Relations Manager  
Association of California Water Agencies

Alameda County Water District  
Amador Water Agency  
Bay Area Water Supply & Conservation Agency  
Bella Vista Water District  
Calaveras County Water District  
California Municipal Utilities Association  
California Special Districts Association  
California Water Association  
California-Nevada Section AWWA  
Camrosa Water District  
Carlsbad Municipal Water District  
Carmichael Water District  
Casitas Municipal Water District  
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Contra Costa Water District  
Cucamonga Valley Water District  
Desert Water Agency  
East Valley Water District  
Eastern Municipal Water District



El Dorado Water Agency  
El Toro Water District  
Elk Grove Water District  
Elsinore Valley Municipal Water District  
Foothill Municipal Water District  
Georgetown Divide Public Utility District  
Golden State Water Company  
Great Oaks Water Company  
Helix Water District  
Indio Water Authority  
Inland Empire Utilities Agency  
Las Virgenes Municipal Water District  
Liberty Utilities  
Los Angeles Department of Water and Power  
Mesa Water District  
Monte Vista Water District  
Municipal Water District of Orange County  
North Marin Water District  
Otay Water District  
Padre Dam Municipal Water District  
Palmdale Water District  
Ramona Municipal Water District  
Rancho California Water District  
Regional Water Authority  
Rosamond Community Services District  
Rowland Water District  
Sacramento Suburban Water District  
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San Gabriel Valley Water Association  
San Gabriel Valley Water Company  
Santa Clarita Valley Water Agency  
Santa Fe Irrigation District  
Santa Margarita Water District  
South Coast Water District  
South Tahoe Public Utility District  
Suburban Water Systems  
Sweetwater Authority  
Tahoe City Public Utility District  
Three Valleys Municipal Water District  
Truckee Donner Public Utility District  
Upper San Gabriel Valley Municipal Water District  
Vallecitos Water District  
Valley Center Municipal Water District

Vista Irrigation District  
Walnut Valley Water District  
West Basin Municipal Water District  
West Kern Water District  
West Valley Water District  
Western Municipal Water District  
Yorba Linda Water District

CC: The Honorable E. Joaquin Esquivel, Chair, State Water Resources Control Board  
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